IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 27.08.2007

CORAM:

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

W.P.Nos.8457 and 11907 of 1996

1. Abdul Sathar (deceased)
2. Dowlath Bibi (wife)
3. Mohammed Yusuf (son)
4. Mohammed Illiath (son) .. Petitioners in both WPs

(rep. by mother and natural guardian
Dowlath Bibi)

Petitioners 2 to 4 are substituted as L.Rs of the deceased first petitioner as per order of Court dated 10.11.1999 in WPMP Nos.16940 and 16941 of 1998.

Versus

1. Thiruvalluvar Transport
Corporation Ltd.,
Rep. by its Managing Director,
Pallavan Salai,
Madras 2.

2. General Manager,
Thiruvalluvar Transport
Corporation Ltd.,
Pallavan Salai,
Madras 2. .. Respondents in both WPs

PRAYER IN W.P.NO.8457 OF 1996: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus to call for the records on the file of the second respondent pertaining to his order No.266/068021/DL-6/TTC/95 dated 23.4.96 and quash the same and consequently direct the respondents to settle the terminal benefits with interest due and payable to the petitioner in full.

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PRAYER IN W.P.NO.11907 OF 1996: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus to call for the records on the file of the second respondent relating to his letter No.92193/C7/TTC/95 dated 20.7.96 and quash the same and consequently direct the respondents to pay the gratuity in full.

For petitioners : Mrs.A.V.Bharathi
For respondents : Mr.S.Sathyamoorthy

C O M M O N O R D E R

These two writ petitions were preferred by the first petitioner, who is since deceased. He is stated to have died on 19.02.1997. The petitioners 2 to 4 are the legal representatives of the first petitioner. The first petitioner joined as a Cleaner in the State Transport Department in the year 1961. After the formation of the first respondent Corporation, his services came to be transferred to the Corporation in the year 1975. While he was in service, he was issued with a charge memo dated 23.09.1995, in which as many as seven charges were levelled against him. The above charges were laid on the footing that while he was working as a Foreman of Depot - IV, a transport bus bearing Registration No.TN-01-n-275 was stealthily removed from the depot under a despatch slip signed by him and that the said bus could not be later on traced and thereby, heavy loss was caused to the first respondent Corporation. The first petitioner submitted his explanation on 28.09.1995. Thereafter, an enquiry was held in which the first petitioner fully participated. The Enquiry Officer submitted his findings based on which a second show cause notice was issued to him on 19.02.1996. The first petitioner submitted his explanation dated 09.03.1996. Subsequently, he was issued with an order of dismissal dated 23.04.1996 apart from ordering recovery of a sum of Rs.21,200/- towards part of the loss caused due to the missing of the Transport bus. In the mean time, it is stated that the first petitioner reached the age of superannuation on 31.12.1995 and by proceedings dated 27.01.1996 issued by the Managing Director of the first respondent Corporation, it is mentioned that the first petitioner along with nine others was retired on 31.12.1995 from the services of the first respondent Corporation. Challenging the ultimate order of dismissal dated 23.04.1996, the first petitioner preferred W.P.No.8457 of 1996. After the order of dismissal, the first respondent Corporation issued proceedings dated 20.07.1996 holding that in view of the dismissal order passed against the first petitioner and since the misconduct related to missing of a transport bus belonging to the first respondent Corporation, the first petitioner is not entitled to payment of gratuity. That apart, by the said proceedings the first petitioner was informed about the other deductions to be made from the terminal benefits payable to him, which included the Housing Loan, Festival Advance, Excess Bonus made, Education Advance and a sum of Rs.21,200/- towards part amount payable by the first

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petitioner for the loss of the bus. Challenging the same, the first petitioner has preferred W.P.No.11907 of 2006.

2. Assailing the order of dismissal dated 23.04.1996, Mrs.A.V.Bharathi, learned counsel for the petitioners at the outset contended that since the first petitioner reached the age of superannuation and was also allowed to retire on and from 31.12.1995, in the absence of any provision in the rules and regulations governing the service conditions of the first petitioner in the first respondent Corporation, the impugned order of punishment could not have been validly issued. According to the learned counsel, unless there is a specific provision enabling the first respondent Corporation to retain the employee in service for the purpose of continuing the disciplinary action initiated before the date of superannuation of the first petitioner and a positive order extending the service for the purpose of continuing the disciplinary proceedings initiated against the first petitioner, the impugned order of dismissal was not valid in law and therefore, the same is liable to be set aside.

3. In support of her submission, the learned counsel relied upon the Division Bench decisions of this Court reported in 2006(4)MLJ 504 [P.Muthusamy vs. Tamil Nadu Cements Corporation Ltd., rep. by its Chairman and Managing Director, Chennai and another], 2005(3)CTC 4 [The State of Tamil Nadu rep. by the Commissioner and Secretary to Govt., Home Department, Fort St.George, Chennai 9 and others vs. R.Karuppiah, Inspector of Police and another] and 1999(2)LLN 993 : AIR 1999 SC 1841 [Bhagirathijena vs. Board of Directors, Orissa State Financial Corporation and others].

4. As against the above submission, Mr.S.Sathyamoorthy, learned counsel appearing for the respondents contended that in the first respondent Corporation, the service conditions of the employees are governed by the model Standing Orders framed under the Tamil Nadu Industrial Employment (Standing Orders) Rules 1947, that under Standing Order 21, the Management at its discretion is empowered to extend the period or service of any workman on reaching the age of superannuation for such longer period as may be considered necessary, i.e. beyond 58 years and in the light of the said power available with the first respondent Corporation, it should be held that the order of dismissal passed on 23.04.1996 though was subsequent to the date of superannuation of the first petitioner, the same was validly passed under the Rules. On merits, the learned counsel contended that since the transport bus was stealthily removed from Depot No.IV on the basis of the despatch slip signed and issued by the first petitioner as Foreman of the said depot, he was squarely responsible for the missing vehicle and therefore, in the light of the gravity of the misconduct found proved against him, the punishment was fully justified and the recovery order against the first petitioner should also be not interfered with.

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5. After hearing the respective counsel, I am of the view that the first petitioner should succeed on the ground, namely, the lack of jurisdiction of the respondents in having passed the order of dismissal after the first petitioner reached the age of superannuation on 31.12.1995. A perusal of the proceeding dated 27.01.1996 issued by the first respondent disclose that the first petitioner was allowed to retire on 31.12.1995. The said proceeding specifically states as under

> "31.12.1995ல் 10 நபர்கள் ஓய்வு பெற்றனர். 2 நபர்கள் விருப்ப ஓய்வு பெற்றுள்ளனர். 6 நபர்கள் இறந்துள்ளனர். 12/95ல் ஓய்வு பெற்றவர்களும், விருப்ப ஓய்வு பெற்றவர்களும், இறந்த தொழிலாளர்களின் சட்டபூர்வ வாரிசுதாரர்களும் ஜனவரி மாத சம்பளத்தில் பிடித்தம் செய்து பட்டுவாடா செய்யப்படும்,"

Below the above referred to statement, names of ten employees, their designation, employment number and the place of working has been stated. In Sl.No.9, the name of the first petitioner has been mentioned. The names of persons who retired on VRS, namely, two employees and the names of six persons who died have also been mentioned. Therefore, the above document clinchingly establish that the first petitioner was allowed to retire from the services of the respondent Corporation on 31.12.1995. When the said fact is beyond dispute, it is futile on the part of the respondents to contend that he could still be proceeded against by way of a disciplinary action which was initiated on 23.09.1995, by issuance of a charge memo.

6. In the first place, there is no specific provision in the model Standing Orders relied upon by the learned counsel for the respondents specifically providing for proceeding with the disciplinary action against an employee who reached his age of superannuation, by retaining him in service beyond the date of retirement, for the purpose of proceeding with the disciplinary action initiated prior to the date of his retirement. Therefore, on that ground itself it will have to be held that any further action proceeded with against the first petitioner on and after 31.12.1995 in continuation of the charge memo dated 23.09.1995 had no legal sanction and therefore, there could have been no scope at all for the respondent Corporation to have passed any order of punishment based on the said charge memo.

7. As far as the Standing Order No.21 is concerned, it deals with retirement. The said clause reads as under:

> "21. Retirement:- Every workman shall retire on attaining the age of 58 (fifty-eight) years which shall be the age of superannuation, provided that the Management may in their discretion extend the period or service of any workman on reaching the said age of superannuation for such longer period as may be considered necessary."

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The said clause in the Standing Order has absolutely nothing to do with the extension of service for the purpose of continuing the disciplinary proceedings, since there is no mention about the same in the said clause. On the other hand, a reading of the said clause only disclose that the said clause is only an enabling provision for the respondent Corporation to exercise its discretion for extending the age of superannuation or period of service of any workman, in the event of any necessity arising for the same. By no stretch of imagination it can be held that the said clause is relatable to disciplinary proceedings and for extension of any one service for the purpose of continuing the disciplinary proceedings. In this context, the decisions relied upon by the learned counsel for the petitioner are apposite on the point. In the Division Bench decision reported in 2006(4)MLJ 504, (cited supra), Justice P.Sathasivam, (as he then was) by relying upon the decision of the Hon'ble Supreme Court reported in AIR 1999 SC 1841, (cited supra) has held that in the absence of any specific enabling provision in the service rules, even any order passed reserving the right to continue the disciplinary proceedings after superannuation is illegal and without jurisdiction. In fact, in the decision reported in AIR 1999 SC 1841(cited supra), the Hon'ble Supreme Court has stated the legal position as under in paragraph Nos.6 and 7:

> "6. It will be noticed from the abovesaid regulations that no specific provision was made for deducting any amount from the provident fund consequent to any misconduct determined in the departmental enquiry nor was any provision made for continuance of departmental enquiry after superannuation.
>
> 7. In view of the absence of such a provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30.6.1995, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement."

That apart, in the decision reported in 2005(3)CTC pg 4 (cited supra) yet another Division Bench judgment reported in 1997 WLR 120 [N.M.Somasundaram vs. The Director General of Police, Madras 4 and others] has been relied upon and the law stated therein has been extracted in paragraph No.22, which reads as under:

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"A reading of Rule 56(a) and (c) together would lead to an irresistible conclusion that in order to retain a public servant or a Government servant in service on attaining his age of superannuation, a positive order in writing shall have to be passed by the Government giving the reasons as to on what grounds which should be on public grounds, a Government servant is retained in service. No doubt Rule 56(c) says that a Government servant under suspension on a charge of misconduct should not be required or permitted to retire of his reaching the date of compulsory retirement. It further says that he should be retained in service until the enquiry into the charge is conducted and a final order passed thereon by the Competent Authority. Therefore, even though it may not be necessary to permit to Government servant against whom a disciplinary proceeding is pending, to retire from service, in order to retain him in service for the purpose of disciplinary proceedings, a positive order in writing is required to be passed. The public ground for passing the said order is the pendency of the disciplinary proceeding. But, what is necessary is that there should be an order passed by the Government not permitting a Government Servant to retire from service. The instruction under Rule 56(c) also does not help the State Government. The instruction reads thus:....."

(Emphasis added)

8. A perusal of the above referred to decisions make it abundantly clear that in the absence of any specific provision in the service regulation or Standing Orders enabling the Management to proceed with the disciplinary action beyond the date of superannuation and that too after positive order in writing to that effect, there will be no jurisdiction vested with the Management to proceed with the disciplinary action initiated against an employee prior to the date of his retirement.

9. In the light of the said legal position and applying the same to the case on hand, since the first petitioner indisputedly reached the age of superannuation on 31.12.1995, the order of dismissal passed on 23.04.1996 without any provision available in the Standing Orders applicable to the first respondent Corporation or any other service regulation available as on date enabling the respondent Corporation for retaining or extending the period of service of an employee, specifically for the purpose of continuing the disciplinary action initiated against the first petitioner on 23.09.1995, the impugned order of dismissal passed on 23.04.1996 is not valid in law and the same is liable to be set aside.

10. In the light of the setting aside of the order of dismissal, the proceedings dated 20.07.1996 impugned in W.P.No.11907 of 1996 to the effect that the first petitioner was not entitled for gratuity cannot also be upheld, though the other part of the order relating to recoveries

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ordered as against the first petitioner including the recovery of sum of Rs.21,200/- towards his part of the liability for the loss of the bus was justified. Having regard to my above conclusions, W.P.No.8457 of 1996 stands allowed and W.P.No.11907 of 1996 is partly allowed, viz., to the extent to which the impugned proceeding dated 20.07.1996 deprived the first petitioner the entitlement of gratuity. In other respects, the order dated 20.07.1996 stands confirmed. In the light of setting aside of the order of dismissal impugned in W.P.No.8457 of 1996, it goes without saying that the first petitioner is entitled for the settlement of all his terminal benefits with 7.5% interest, which is the prevailing rate of bank interest. No costs.

gms

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Managing Director,
   Thiruvalluvar Transport
   Corporation Ltd.,
   Pallavan Salai,
   Madras 2.

2. The General Manager,
   Thiruvalluvar Transport
   Corporation Ltd.,
   Pallavan Salai, Madras 2.

+2 cc to Mr.S.Sathiamurthi, Advocate Sr.Nos.53509 & 53510.

+2 cc to M/s.A.V.Bharathi, Advocate Sr.Nos.53260 & 53263.

KLT(CO)
dcp/6.9

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